



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

Nor does such extension seem unjustifiable. It is true that the courts, when they assign any reason for their action in raising estoppels from the various relationships discussed, other than that of mere binding authority, usually retreat to the sheltering bulwarks of public policy.¹⁴ But the rule of public policy invoked seems to be nothing more formidable or difficult to comprehend than the ancient but honorable maxim that "no man shall take advantage of his own wrong,"¹⁵ which is admitted by some to be at the bottom of estoppel by misrepresentation.¹⁶ Viewed in this light, the decision in the principal case seems proper, even though a misrepresentation is difficult to find. The defendant company after utilizing the permission of the Town Board to make money from the inhabitants of the town, now proposes to dictate its own terms to the public to whom it supplies a necessary commodity, and to do so without surrendering the privileges it obtained. Clearly this is an attempt to take advantage of its own wrong, and the court appears to be wholly justified in preventing this, even if it be necessary in doing so, to overstep the old technical confines of estoppel and to strain somewhat in the search for a pertinent analogy.¹⁷

RELIGIOUS LIBERTY IN THE UNITED STATES.—Not only does the Federal Constitution provide that "no religious test shall ever be required as a qualification to any office or public trust under the United States"¹⁸ and that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof,"¹⁹ but the State government, to which it will be observed the above limitations do not apply, are more strictly constrained touching liberty of conscience, by the constitutions of the various commonwealths. Some of these add to the federal guaranties, provisions against discrimination or preference between sects,²⁰ and prohibit the disqualification of witnesses because of religious belief.²¹ However far such a result may have been from the contemplations of those who framed our fundamental law, it seems clear that the spirit of American government, as exemplified in the Constitution, requires at least in theory, perfect equality before the law, of every sect of religion and every gradation of agnosticism and atheism. The conception of the monarch as the

¹⁴Bertram *v.* Cook (1875) 32 Mich. 518; Babcock *v.* Clarkson, *supra*; see Blight's Lessee *v.* Rochester (1822) 20 U. S. 535, 547.

¹⁵It seems proper to sustain these modern estoppels on this ground, even though the estoppel between landlord and tenant had its origin in estoppel by deed or by one of the old formal estoppels *in pais*. Bigelow, Estoppel (6th ed.) 547; Cababe, Estoppel, 2-3.

¹⁶Herman, Estoppel, 336.

¹⁷Cf. Chicago General Ry. *v.* Chicago (1898) 176 Ill. 253; People *v.* Suburban R. R. (1899) 178 Ill. 594, 606, 607; Rutherford *v.* Hudson River Traction Co. (1906) 73 N. J. L. 227, 235; and Village of Fredonia *v.* Fredonia (App. Div., 2nd Dep., 1915) 155 N. Y. S. 212, where estoppel of this nature was invoked to protect a gas company against persecution by the municipality it served. But see Mayor of Worcester *v.* Worcester Con. St. Ry. (1906) 192 Mass. 106, 111-112.

¹⁸U. S. Const., Art. VI, § 3.

¹⁹U. S. Const., Amendment I.

²⁰N. Y. Const., Art. I, § 3; La. Const., Art. 53.

²¹N. Y. Const., Art. I, § 3.

representative of the Almighty which, in other countries has led to a feeling that the state should assist the church in looking after the spiritual welfare of the people, finds no place in the American theory of government. Indeed, complete indifference on the part of the state toward matters of religion is essential to a strictly symmetrical and consistent application of our abstract conception of liberty under the law.⁵ Of course, while these constitutional provisions require the impartial protection of every form of religion, as well pagan as Christian,⁶ they do not go to the extent of permitting acts otherwise illegal because they are claimed to be done from religious motive. This salutary interpretation has been invoked in the long fight against polygamy, which was at one time preached and practiced as a religious duty by the Mormon Church;⁷ as well as in cases where believers in healing by faith and by prayer have neglected to provide suitable medical attendance for those in their care,⁸ or have engaged in the practice of medicine without a license.⁹

Though the theoretical indifference of the American governments, state and national, to matters of religion is departed from in very many instances where no legal necessity appears,¹⁰ we are here concerned only with cases where the courts have been asked to declare a legislative act invalid as an infringement of the constitutional guarantees of religious liberty. Thus, statutes forbidding work on Sunday have been upheld as a valid exercise of the police power in the interests of the public health,¹¹ and those prohibiting blasphemy have been declared valid as tending to prevent breaches of the peace.¹² Although it was early held that an atheist was incompetent to testify,¹³ this disability has now been generally removed by statute,¹⁴ subject, however, to the right of counsel to bring out by examination the witness's religious belief or disbelief for the purpose of casting doubt upon his credibility.¹⁵ The most direct recognition, however, which is accorded

⁵See general discussion of this subject by James Bryce, *The American Commonwealth*, (New York 1908), Vol. II, 643, 646; see *People v. Board of Education* (1910) 245 Ill. 334, 340.

⁶Story on the Constitution (5th ed.) § 1879; see *Rogers v. Brown* (1843) 20 N. J. L. 119; *Watson v. Jones* (1871) 80 U. S. 679, 728.

⁷*Davis v. Beason* (1890) 133 U. S. 333; *Reynolds v. United States* (1878) 98 U. S. 145; *The Late Corporation etc. v. United States* (1889) 136 U. S. 1.

⁸*People v. Pierson* (1903) 176 N. Y. 201.

⁹*State v. Buswell* (1894) 40 Neb. 158; but see *State v. Mylod* (1898) 20 R. I. 632.

¹⁰E. g., the offering of prayer at the opening of Congress and State Legislatures; the provision of chaplains for the army and navy; the executive proclamation of a day of Thanksgiving; the recognition of the Deity in the preambles of the New York and other State Constitutions as the Source of freedom; etc., etc.

¹¹*Hennington v. Georgia* (1896) 163 U. S. 299; *People v. Havnor* (1896) 149 N. Y. 195; 15 Columbia Law Rev., 619, see N. Y. Penal Law, §§ 2143, 2147, 2149.

¹²*Commonwealth v. Kneeland* (1838) 37 Mass. 206; see Mass. Revised Laws (1902) c. 212, § 28; *Delaware Revised Code* (1893) c. CXXXI, § 1.

¹³*Thurston v. Whitney* (1848) 56 Mass. 104.

¹⁴N. Y. Const., Art. I, § 3; N. Y. Code Civ. Proc., § 849; Mass. Revised Laws (1902) c. 175, § 19.

¹⁵Mass. Revised Laws (1902) c. 175, § 19; *Chamberlayne, Evidence*, § 199.

to religious institutions by our States, is found in the very general exemption from taxation granted to the real estate of churches, actually in use for public worship,¹⁶ and, even to the private property of clergymen.¹⁷ It has been argued that such statutes practically require contributions from the taxpayers for the support of religious societies, since the exemption of their buildings from taxation necessitates a levy at a higher rate upon all other taxable property in the locality. But this contention has not been sustained by the courts, the constitutional provisions being held only to extend to forbidding the direct levying of taxes for the support of religious establishments,¹⁸ which are to be regarded as benefiting the public and relieving the state to some extent of the burden of caring for its citizens.¹⁹

A recent case, *Herold v. Parish Board of School Directors*, (La. 1915) 68 So. 116, while holding that under the provision of the Louisiana constitution forbidding any preference or discrimination between religious sects or creeds, Bible reading in the public schools was illegal, enters into a somewhat extended discussion of the general subject of religious liberty. The weight of authority in this country permits such reading on the ground that the Scriptures are not sectarian within the meaning of the constitutions, but may be used for their historical, literary, and above all, moral value.²⁰ Even courts holding otherwise²¹ generally recognize, as does the principal case, that Christianity, or at least Theism, is the dominant religion of this country, and this, it is submitted is the reason for the difference between constitutional theory and governmental practice. Public opinion demands such incidental recognition of the religious belief of the people as shall prevent our government from being stigmatized as atheistic, though it would deeply resent any attempt substantially to interfere with the free exercise of the religious proclivity of any individual.

CORPORATE EXISTENCE AS THE SUBJECT OF COLLATERAL JUDICIAL INQUIRY.—A departure from the policy of the law in discouraging collateral attack on corporate existence, is found in a recent suit in the federal courts to enjoin patent infringement. Although the question was not raised by the pleadings, the district judge of his own motion inquired into the defendant's corporate existence and dismissed the suit for its incapacity to sue. *American Ball Bearing Co. v. Adams* (D. C., N. D. Ohio, E. D., 1915) 222 Fed. 967. Aside from the rather radical position of the court in holding the incorporation invalid because of its "dummy" character, his right to conduct the inquiry at all is open to question.

¹⁶N. Y. Tax Law, Art. I, §§ 4, 7; Mass. Revised Laws (1902) c. 12, § 5 (7).

¹⁷N. Y. Tax Law, Art. 4, § 11.

¹⁸Trustees *v.* State (1877) 46 Iowa 275, 282.

¹⁹Methodist Episcopal Church, South *v.* Hinton (1893) 92 Tenn. 188.

²⁰Pfeiffer *v.* Board of Education of Detroit (1898) 118 Mich. 560; Spiller *v.* Inhabitants of Woburn (1866) 94 Mass. 127; Hackett *v.* Brooksville Graded School District (1905) 120 Ky. 608; Donahoe *v.* Richards (1854) 38 Me. 379.

²¹State *v.* District Board (1890) 76 Wis. 177; State *v.* Sheve (1902) 65 Neb. 853; People *v.* Board of Education (1910) 245 Ill. 334, but see dissenting opinion p. 353.